

Risk Management Quarterly Training
March 11, 2008

- Transportation policy.
 - Risk has sent 3 letters recently dealing with transportation.
 - The first one said we recommend that you not travel out of state except in commercial transportation.
 - The second one said don't lend or rent out your buses.
 - The third one said the first two letter apply to everyone Risk insures, school districts, higher ed, and state agencies, it applies to all vehicles not just buses.
 - Why do we care?
 - Someone from Washington County said there is not a big wall at the border of Utah and Arizona or Nevada. Actually, that is not true, there is a big legal wall at the border of Utah, only it is more like a cliff. On this side of the border you can only fall as far as the Governmental Immunity caps let you fall. So if a bus crashes and the worst happens, liability is capped at \$2 million dollars per accident.
 - This is how come you pay \$100/year to insure a bus.
 - What happens if you drive across the border and into Nevada, California, Arizona, Wyoming, and so on? Potentially unlimited liability. 50 people, \$50 million?
 - Personal Injury: Bus Accident- 2.5 million dollar settlement. Type of Injuries- Coma-Brain Damage. Name of Case- Tong, et al v. B.B. Bonner Construction. Settled, Amount- \$2,500,000.00 (\$1,000,000.00 cash plus structured settlement with present value \$1.5 million), plus \$130,000 paid for medical expenses. On July 12, 1984, the plaintiff was a thirteen year-old passenger on a school bus traveling on an interstate highway when the defendant's vehicle, traveling in the opposite direction, veered across the center line without any apparent reason and smashed into the school bus. Plaintiff was thrown out of the bus and landed on his head, sustaining an intracranial hemorrhage, an open compound fracture of the left femur with displacement and multiple facial lacerations. Plaintiff remained in coma for ten days. The defendant driver was killed.
 - \$15 Million Settlement in Fatal Casino-Bus Crash, Published: July 27, 2002. Family members of the eight bus passengers killed in the worst accident in the Garden State Parkway's history and survivors of the crash will share \$15 million from a settlement reached last week, lawyers in the case said yesterday. The accident occurred on the day before Christmas, 1998. The white-and-silver charter bus, operated by Bruins Transportation, which is now defunct, was carrying 23 people from Brooklyn to Atlantic City for a day of

casino gambling. Around 10:30 a.m., the driver, Valentin Viner, lost control of the bus and it spun wildly on the highway before tumbling down a 100-foot embankment, sending passengers flying through shattered windows. Eight people were killed and 15 others were injured. The amount the injured plaintiffs will receive varies: some injuries were more severe than others, and in a few cases, passengers who survived saw relatives die in the crash.

Address  <http://www.bus-accident-lawyer.com/>

Contact a [bus accident lawyer](#) from Williams Kherkher at 866.950.9000 today!

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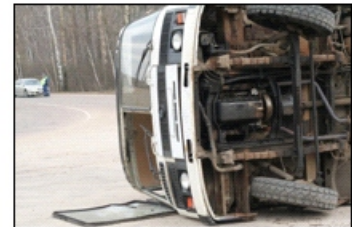
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Bus Accident Lawyer

As the congestion on our streets nationwide increases, people turn more and more frequently to buses to get them from point A to point B in an efficient manner. While the number of accidents involving buses is still relatively small, the likelihood for injuries and deaths is worse than a car. Also, a single bus accident can injure 30 people.

Bus accidents can be caused by a variety of factors, not all of which are attributable to congestion. Some of these causes include:

- ♦ Driving Under the Influence
- ♦ Reckless Driving
- ♦ Weather
- ♦ Defective machinery
- ♦ Improper maintenance
- ♦ Dangerous roadways
- ♦ Driver negligence
- ♦ Inadequate security



♦ Negligence

In addition to mass transit buses causing accidents, school buses, charter buses, and party buses also contribute to the number of bus accidents increasing. As the number of people riding buses increases so too has the number of accidents. The number of buses involved in fatal accidents is going up as well.

On average, 16,000 school bus accidents occur each year resulting in 12,000 injured children and 130 deaths.

Bus accidents are more complex than normal car accidents. They require an experienced Bus Accident Attorney. If you or someone you know has been involved in a bus accident, contact the Bus Accident Attorneys of Williams Kherkher at 866.950.9000. They will help you to determine the best legal course of action for your case.



- Why does hiring a commercial bus make a difference?
 - I have surveyed all of the claims adjusters in the office and our liability lawyers. The number one cause of bus accidents is driver error. Guess who is responsible for the driver? His or her employer—you.
 - Presumably, a professional transportation company has drivers who are better qualified to make long distance trips, they definitely have better equipped buses, and they have their own insurance.
- What are the exceptions to reduced out of state travel:
 - If you are located on the border you can make short trips across it. This includes athletic events, debate trips, that kind of thing.
 - Employees can travel to out of state conferences in district cars.
 - Bottom line though is please prudently evaluate all out of state travel requests.
- What about lending or renting out your buses, why does that matter?
 - Again, it is all about Governmental Immunity.
 - Governments enjoy immunity for some things because the government has to do certain things, it doesn't have a choice. Things like educating children. So the idea of governmental immunity has developed, the government cannot be sued for things like flood control, medical care of high risk populations, that sort of thing.
 - Governments are not immune from their own negligence but they do enjoy a cap on the amount of damages that can be paid.
 - So if your driver makes a mistake and gets a bus hit by a train then you are only liable for \$2 million. This hopefully reasonably compensates the victims but you do not go bankrupt. And of course your risk pool can charge reasonable rates.
 - What happens when you lend out your buses or rent them?
 - There is a potential there that governmental immunity no longer applies.
 - How do you become liable if you rent out your buses? You rent out your drivers too and their negligence makes you liable.
 - What exceptions are there?
 - You can lend/rent to other Risk covered entities. I am a lot more comfortable saying a charter school using your bus is still performing a governmental function.
 - If you lend or rent to other governmental entities you are probably on firmer ground, presumably they are using them for governmental purposes, but you are on your own if you do this. You can get the rentee to sign an indemnity agreement and provide insurance but that is only as good as their financial backing.

- Higher Ed. This is already a rule: Board of Regents Rule R556-4.1
Transportation of For-Hire Groups not Affiliated with the Institution
Prohibited - An institution will not transport for-hire groups or individuals not affiliated with it. It will not offer programs, courses, conferences, seminars, workshops, institutes, or athletic programs for credit or non-credit, where the primary reason for the offering is to attempt to make legitimate the use of campus authorized carriers.

- Deductibles.
 - Liability: no deductible.
 - Property: \$1,000
 - unless the fund has recommended that the insured take a reasonable risk reduction action; the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and the insured has not complied with the recommendation within thirty days of notice then a \$100,000 deductible applies. This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible. R37-1-5(2)(e).
 - This is backed up by statute, Utah Code Ann. § 3A-4-103(2)(a) provides that Each state agency shall comply with reasonable risk related recommendations made by the risk manager.
 - This is the nuclear option, it is not likely to happen, Risk is a carrot kind of entity not a big stick wielder. But it is there.
 - Fire suppression not done might invoke this.
- Waivers and informed consents.
 - A minor cannot release a claim, nor can the minor's parents.
 - Why not take a release in the hopes they won't know they cannot sue? I think this is unethical.
 - What can you do? Informed consents.

Informed Consent and Waiver and Release

This is an Informed Consent Form for Minors which identifies risks of participating in a Bicycle Rodeo, and a Waiver and Release for parents/guardians.

Injury may result from your participation in the Bicycle Rodeo. You are expected to familiarize yourself with the Bicycle Rodeo, what is required, and the rules of conduct for the Bicycle Rodeo. You are expected to wear appropriate safety equipment, including a helmet, and follow proper operating procedures including safety procedures as outlined by the coordinator, plus any directions given by an authorized person.

I, _____, acknowledge that I have familiarized myself with the Bicycle Rodeo and what is required, wear appropriate safety equipment, including a helmet, will follow the rules of conduct, will follow the operating procedures, and will follow any directions given by an authorized person.

(Signature of participant)

The undersigned, the legal guardian of the above identified participant, in consideration of participant's participation in the Bicycle Rodeo do hereby agree to this waiver and release.

I recognize that participation in the Bicycle Rodeo may involve moderate to strenuous physical activity and may cause physical and or emotional distress to participants. There may also be associated health risks. I state that participant is free from any known heart, respiratory or other health problems that could prevent participant from safely participating in any of the activities.

I certify that I have medical insurance or otherwise agree to be personally responsible for costs of any emergency or other medical care that participant receives. I agree to release State of Utah, the sponsor of the Bicycle Rodeo and their agencies, departments, officers, employees, agents, and volunteers from the cost of any medical care that participant receives as a result of participation in the Bicycle Rodeo.

I further agree to release the State of Utah, the sponsor of the Bicycle Rodeo, their agencies, departments, officers, employees, agents and volunteers from any and all liability, claims, demands, breach of warranty, negligence, actions, and causes of actions whatsoever for any loss, claim, damage, injury, illness, attorney's fees or harm of any kind or nature to me arising out of participant's participation in the Bicycle Rodeo. This release extends to any claim made by parents or guardians or their assigns arising from or in any way connected with the aforementioned activities.

CONSENT

Consent is expressly given, in the event of injury, for any emergency aid, anesthesia and / or operation, if in the opinion of the attending physician, such treatment is necessary.

I have carefully read and understand the contents of the foregoing language and I specifically intend it to cover participant's participation in the above stated Bicycle Rodeo

Name _____ **Date** _____

Signature _____
(Parent or legal guardian)

- There has been a change to the policy regarding ADA accommodation denials.
 - You now need Risk concurrence in the denial of an accommodation if you want Risk to defend the case. See Personal Injury Liability Coverage, Exclusion G.
- Other Exclusions in the policy.
 - General Liability Exclusion A: “to liability assumed by the insured under any contract or agreement except a defined contract.” Contracts are not covered unless they are a defined contracts.
 - Simple example: you don’t pay your mortgage and you are sued. Risk won’t cover.
 - More complex example: You agree to indemnify Big Company Wireless in a contract to place a cell tower on your light pole at the football stadium. A piece falls off and hits a passerby. They sue and Big Company Wireless wants you to indemnify them because they say that you let kids climb on the pole and knock off the antennae. Risk would not cover the indemnity agreement because it was not a defined contract.
 - What is a defined contract? It is a contract approved by the Director of Risk Management.
 - When you should seek approval. Anytime you think a contract imposes an obligation on you to do something that you want Risk to pay for. For example, anytime indemnification is requested. Or, you want to lend your buses out to a city.
 - General Liability E: “to any obligation for which the insured or any carrier as his insurer may be held liable under any workers compensation, unemployment compensation or disability benefits law, or under any similar law.” Workers Comp claims are not liability claims, they are workers comp claims and handled under that system.
 - General Liability J: “to bodily injury or property damage arising out of repair work performed on automobiles by students in schools or ATC's when not part of a regularly conducted class.” Kids who work on their cars at lunch or the neighbor’s car are not covered.
 - General Liability N: fraud, willful misconduct or false testimony under oath.
 - Fraud.
 - Willful misconduct. Mostly disqualifies individuals from coverage, not the district or agency. So a suit for sexual harassment occurs and the employee deliberately did it. Risk would cover the district—pay damages—but would invoke the exclusion and not cover the employee for assault, infliction of emotional distress, and other causes of action against him.

- False testimony under oath.
- Personal Injury Liability I: “any damages attributable to any period between the date the named insured becomes aware of an offense, occurrence or incident for which coverage is provided under this coverage and the date such offense, occurrence or incident is reported to the fund.” Until you tell Risk, Risk won’t cover it.
- Personal Injury Liability K: “wages, benefits, or damages determined to be owing pursuant to an agreement or a contract of employment (other than a generally applicable employee handbook, rule, or policy manual or a collectively bargained agreement or contract applying to a general class of employees); severance pay; or other obligation assumed by any insured to make payments in the event of termination of employment.”
 - This does not apply to generally applicable contracts based on policy manuals or collectively bargained. So most cases are covered.
 - Where it applies is if you contract specially with an employee you have to pay the contract even if you don’t want them any more.
- Personal Injury Liability L: “any claim based upon, arising from, or in any way related to any request for injunctive relief, declaratory relief, disgorgement, an accounting, reimbursement, job reinstatement, or any equitable remedy.”
 - This is a big exclusion. If a lawsuit is filed and they want injunctive relief then Risk does not cover it. So if someone sues to force you to modify a building to allow wheelchair access the lawsuit is not covered.
- And then the modification costs are not covered under Personal Injury Liability M: “costs incurred by an insured to modify or adapt any building, property, program, service or activity in order to make such building, property, program, service or activity more accessible or accommodating to any disabled person.”
- Personal Injury Liability N: “any educational program costs or benefits, including expenses, reimbursement, accommodation, or provision of devices, equipment or services, pursuant to IDEA, section 504, ADA or any similar disability law.”
- What isn’t excluded? Personal property is covered.
 - At the option of the insured, personal property belonging to members of the governing body of the insured, members of its boards or commissions, elected or appointed officials, employees, volunteers and students are covered for property located on premises owned, leased or occupied by the insured. Coverage is for actual cash value, to the extent homeowners or renters insurance doesn’t cover and subject to the \$1,000 deductible.

- What to do when you are sued.
 - See the Risk website <http://risk.utah.gov/main/>
 - Notify Risk if you get a lawsuit.
 - Notify Risk if you think you might be getting a lawsuit.
 - Notify Risk if you have notified Risk and haven't heard anything back.
 - File a request for representation and indemnification.
 - Utah Code Ann. § 63-30d-902: Before a governmental entity may defend its employee against a claim, the employee shall make a written request to the governmental entity to defend him within ten days after service of process upon him or where there is no prejudice.
 - Cooperate. Utah Code Ann. § 63-30d-902: If the employee fails to reasonably cooperate in the defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend the employee, nor pay any judgment, compromise, or settlement against the employee in respect to the claim.
 - Stay in touch.
 - Settlement.